

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 09 Civ. 3481 (HB)

Plaintiff, :
- v. - :
ANY AND ALL FUNDS ON DEPOSIT IN :
ACCOUNT NO. 12671905, HELD IN THE :
NAME OF LANDLOCKED SHIPPING :
COMPANY AT WELLS FARGO BROKERAGE :
SERVICES, LLC, AND ALL INTEREST AND :
OTHER PROCEEDS TRACEABLE THERETO, :
ANY AND ALL FUNDS ON DEPOSIT IN :
ACCOUNT NO. 0578010886, HELD IN THE :
NAME OF LANDLOCKED SHIPPING :
COMPANY AT WELLS FARGO BANK, N.A., :
AND ALL INTEREST AND OTHER PROCEEDS :
TRACEABLE THERETO, and :
ONE MERCEDES S600 FOUR-DOOR SEDAN, :
BEARING VEHICLE IDENTIFICATION :
NUMBER WDBGA57G5XA421548, :
Defendants-in-rem. :
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DECLARATION OF AMY LESTER

(VOLUME I)

PREET BHARARA
*United States Attorney for the
Southern District of New York*

Attorney for the United States of America

Amy Lester
*Assistant United States Attorney
Of Counsel*

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ONE MERCEDES S600 FOUR-DOOR SEDAN, :
BEARING VEHICLE IDENTIFICATION :
NUMBER WDBGA57G5XA421548, :

Defendants-in-rem. :
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DECLARATION OF AMY LESTER

AMY LESTER, pursuant to the provisions of 28 U.S.C. § 1746, declares as follows:

1. I am an Assistant United States Attorney in the office of Preet Bharara, United States Attorney for the Southern District of New York. I am the Assistant United States Attorney responsible for representing the United States of America (the "Government") in the above-referenced case. I respectfully submit this declaration in support of the Government's Cross-Motion to Strike or for Summary Judgment and in opposition to Claimants' Motion for Summary Judgment.

2. Attached to this declaration is the Affidavit of Robertson Park dated November 17,

2009, submitted in support of the Government's Cross-Motion to Strike or for Summary Judgment and in opposition to Claimants' Motion for Summary Judgment.

3. Also attached to this declaration are exhibits relevant to the motion. Each of those exhibits is briefly described below.

Pleadings and Discovery Responses

4. Attached hereto as Exhibit 1 is a true and correct copy of the Amended Verified Complaint dated May 12, 2009.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Verified Claim of Claimants Landlocked Shipping Company and Dr. Jitka Chvatik dated May 7, 2009.

6. Attached hereto as Exhibit 3 is a true and correct copy of Claimants Landlocked Shipping Company and Dr. Jitka Chvatik's Jury Demand and Answer to Amended Verified Complaint dated May 27, 2009.

7. Attached hereto as Exhibit 4 is a true and correct copy of Claimants' Responses to Special Interrogatories dated July 27, 2009.

8. Attached hereto as Exhibit 5 is a true and correct copy of Claimants' Responses to United States' First Set of Interrogatories and Request for Production of Documents to Claimants Landlocked Shipping Company and Dr. Jitka Chvatik dated July 31, 2009.

Dr. Chvatik's Deposition Transcript and Exhibits

9. Attached hereto as Exhibit 6 is a true and correct copy of the certified transcript of the deposition of Dr. Jitka Chvatik taken on October 30, 2009.

10. Attached hereto as Exhibit 7 is a true and correct copy of a letter from Heidi Houston to Viktor Kozeny dated March 13, 1997, which was marked as Government Exhibit 5 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and

produced to Claimants.

11. Attached hereto as Exhibit 8 is a true and correct copy of a letter from Heidi Houston to Viktor Kozeny dated May 26, 1997, which was marked as Government Exhibit 7 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

12. Attached hereto as Exhibit 9 is a true and correct copy of two memoranda regarding the transfer of name for water and electricity service at Peak House, which was marked as Government Exhibit 9 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

13. Attached hereto as Exhibit 10 is a true and correct copy of a fax from Dorothy McNamara to Heidi Houston dated June 13, 1997, which was marked as Government Exhibit 10 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

14. Attached hereto as Exhibit 11 is a true and correct copy of a closing list for the purchase of Peak House, which was marked as Government Exhibit 11 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

15. Attached hereto as Exhibit 12 is a true and correct copy of a fax from Viktor Kozeny to Hans Bodmer dated April 27, 1998 containing wire transfer instructions, which was marked as Government Exhibit 12 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from the New York County District Attorney's Office and produced to Claimants.

16. Attached hereto as Exhibit 13 is a true and correct copy of written communications from Dana Brackett to Viktor Kozeny and Haydon Mitchell, which were marked as Government Exhibit 13 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from the New

York County District Attorney's Office and produced to Claimants.

17. Attached hereto as Exhibit 14 is a true and correct copy of an affidavit of John Christensen dated May 11, 2000, submitted in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.), which was marked as Government Exhibit 14 at the deposition of Dr. Jitka Chvatik.

18. Attached hereto as Exhibit 15 is a true and correct copy of an invoice from Christensen Design Group to Dorothy McNamara dated November 12, 1997, which was marked as Government Exhibit 18 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Christensen Design Group and produced to Claimants.

19. Attached hereto as Exhibit 16 is a true and correct copy of a fax from Cleopatra Adderley to Dr. Michael T. McNamara dated December 17, 1997, which was marked as Government Exhibit 19 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from the New York County District Attorney's Office and produced to Claimants.

20. Attached hereto as Exhibit 17 is a true and correct copy of a letter from Heidi Houston to Viktor Kozeny dated September 1, 1999, which was marked as Government Exhibit 20 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

21. Attached hereto as Exhibit 18 is a true and correct copy of a letter from Heidi Houston to Viktor Kozeny dated November 9, 1999, which was marked as Government Exhibit 22 at the deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

22. Attached hereto as Exhibit 19 is a true and correct copy of an open listing contract for Peak House dated November 9, 1999, which was marked as Government Exhibit 23 at the

deposition of Dr. Jitka Chvatik, and obtained by the Government from Houston & O'Leary and produced to Claimants.

23. Attached hereto as Exhibit 20 is a true and correct copy of the Memorandum and Articles of Association of Landlocked Shipping Company, which was marked as Government Exhibit 24 at the deposition of Dr. Jitka Chvatik, and produced to the Government by Claimants.

Documents Produced by the Parties

24. Attached hereto as Exhibit 21 is a true and correct copy of a letter from Heidi Houston to Jackie Miller dated October 8, 1999 and a fax cover sheet from Heidi Houston to Viktor Kozeny and Jacque Miller dated February 18, 2000, which were obtained by the Government from Houston & O'Leary and produced to Claimants.

25. Attached hereto as Exhibit 22 is a true and correct copy of excerpts from Viktor Kozeny's calendars, which were obtained by the Government from the New York County District Attorney's Office and produced to Claimants.

26. Attached hereto as Exhibit 23 is a true and correct copy of an Oily Rock reconciliation of profit account statement and Minaret Group Ltd. bank account statement, which were obtained by the Government from Omega Advisors and produced to Claimants.

27. Attached hereto as Exhibit 24 is a true and correct copy of a fax from Haydon Mitchell to Hans Bodmer and Claudia Strasser dated April 27, 1998 and a fax from Emma Pye to Kurt Buchmann dated June 16, 1998, which were obtained by the Government from counsel for Viktor Kozeny and produced to Claimants.

28. Attached hereto as Exhibit 25 is a true and correct copy of three faxes from John Christensen to Viktor Kozeny dated July 13, 1998, October 28, 1998, and November 17, 1998, which were obtained by the Government from Christensen Design Group and produced to Claimants.

29. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from an inventory of the contents of Peak House, which was produced by Claimants.

Testimony from the Criminal Trial of Frederic Bourke

30. Attached hereto as Exhibit 27 is a true and correct copy of an excerpt from the trial testimony of John Pulley in the case United States v. Frederic Bourke, 05 Cr. 518 (SAS).

31. Attached hereto as Exhibit 28 is a true and correct copy of an excerpt from the trial testimony of Thomas Farrell in the case United States v. Frederic Bourke, 05 Cr. 518 (SAS).

32. Attached hereto as Exhibit 29 is a true and correct copy of an excerpt from the trial testimony of Hans Bodmer in the case United States v. Frederic Bourke, 05 Cr. 518 (SAS).

33. Attached hereto as Exhibit 30 is a true and correct copy of an excerpt from the trial testimony of Thomas D. McCloskey, Jr. in the case United States v. Frederic Bourke, 05 Cr. 518 (SAS).

34. Attached hereto as Exhibit 31 is a true and correct copy of an excerpt from the trial testimony of Kathryn Fleck in the case United States v. Frederic Bourke, 05 Cr. 518 (SAS).

35. Attached hereto as Exhibit 32 is a true and correct copy of an excerpt from the trial testimony of Megan Harvey in the case United States v. Frederic Bourke, 05 Cr. 518 (SAS).

Affidavits Submitted in the Colorado Litigation Against Kozeny and Landlocked

36. Attached hereto as Exhibit 33 is a true and correct copy of the affidavit of Albert Glickman dated January 31, 2000, submitted in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

37. Attached hereto as Exhibit 34 is a true and correct copy of the affidavit of Thomas D. McCloskey, Jr. dated February 1, 2000, submitted in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

38. Attached hereto as Exhibit 35 is a true and correct copy of the affidavit of Aaron H. Fleck dated February 15, 2000, submitted in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

39. Attached hereto as Exhibit 36 is a true and correct copy of the affidavit of Frederic Bourke dated February 17, 2000, submitted in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

40. Attached hereto as Exhibit 37 is a true and correct copy of the second affidavit of Aaron H. Fleck dated June 16, 2000, submitted in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

Other Documents Related to the Colorado Litigation

41. Attached hereto as Exhibit 38 is a true and correct copy of a decision dated June 23, 2000 in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.), as reported at 115 F. Supp. 2d 1231 (D. Colo. 2000).

42. Attached hereto as Exhibit 39 is a true and correct copy of the Findings of Fact and Order Modifying Injunction dated October 22, 2001 in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

43. Attached hereto as Exhibit 40 is a true and correct copy of a letter from AUSA Lisa P. Korologos to the Honorable Lewis T. Babcock dated October 20, 2005.

44. Attached hereto as Exhibit 41 is a true and correct copy of the Order of Continuance and Termination of Preliminary Injunction dated March 9, 2009 in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

45. Attached hereto as Exhibit 42 is a true and correct copy of the Notice to United States

of America of Stipulation for Continuance and Termination of Preliminary Injunction dated March 9, 2009 in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

46. Attached hereto as Exhibit 43 is a true and correct copy of the Order of Dismissal dated April 9, 2009 in the case National Union Fire Insurance Company of Pittsburgh, PA., et al. v. Viktor Kozeny, et al., Civil Action No. 00-B-383 (D. Colo.).

Dated: New York, New York
November 23, 2009



AMY LESTER